REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 34 OF 2020
(Arising out of Special Leave Petition (Crl.) No. 7678 of 2019)

SHILPA MITTAL …APPELLANT(S)

Versus

STATE OF NCT OF DELHI & ANR. …RESPONDENT(S)

J U D G M E N T

Deepak Gupta, J.

Leave granted.

2. "Whether an offence prescribing a maximum sentence of more than 7 years imprisonment but not providing any minimum sentence, or providing a minimum sentence of less than 7 years, can be considered to be a *'heinous offence'* within the meaning of Section 2(33) of The Juvenile Justice (Care and Protection of Children) Act, 2015?" is the extremely important and interesting issue which arises in this case.

3. The factual background is that a juvenile 'X' is alleged to have committed an offence punishable under Section 304 of the Indian Penal Code,1860 (IPC for short) which offence is punishable with a maximum punishment of imprisonment for life or up to 10 years and fine in the first part and imprisonment up to 10 years or fine, or both in the second part. No minimum sentence is prescribed.

4. The deceased in the motor vehicle accident was the brother of the appellant herein. The juvenile at the time of occurrence was above 16 years but below 18 years. The Juvenile Justice Board vide order dated 04.06.2016 held that juvenile 'X' has committed a heinous offence, and, therefore should be tried as an adult. The appeal filed to the Children's Court was also dismissed on 11.02.2019. Thereafter, the juvenile 'X', through his mother approached the High Court of Delhi, which vide order 01.05.2019 held that since no minimum sentence is prescribed for the offence in question, the said offence did not fall within the ambit of Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015. This order is under challenge in this appeal.

5. We have heard Mr. Siddharth Luthra, learned senior counsel for the appellant and Mr. Mukul Rohatgi, learned senior counsel and Mr. Hrishikesh Baruah, learned counsel appearing for juvenile 'X'.

6. To appreciate the contentions of the parties, it would be relevant to make a brief reference to the history and development of Juvenile Justice Act in India. In India there was no pan India Act to govern children, and some states had their own enactments, like the Madras Children Act, 1920. The Union had also enacted the Children Act of 1960 but this was only applicable to Union Territories and not the States. Therefore, this Court in ***Sheela Barse(II) and others*** *vs.* ***Union of India and others***[1], observed as follows :-

> **"4.** We have by our order dated August 5, 1986 called upon the State Governments to bring into force and to implement vigorously the provisions of the Childrens' Acts enacted in the various States. But we would suggest that instead of each State having its own Childrens' Act different in procedure and content from the Childrens' Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country..."

1 (1986) 3 SCC 632

It would be pertinent to mention that these observations were made in the context of developments happening internationally in the field of Child Rights. The United Nations General Assembly adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice on 29th November, 1985. These Rules are commonly referred to as the Beijing Rules. Clause 4.1 of the Rules reads as follows :-

> "4.1 In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity."

7. As is apparent, the Rules did not fix any specified age and left it to each country to frame their domestic laws, keeping in view the various relevant doctrines.

8. After the adoption of the Beijing Rules, India enacted the Juvenile Justice Act, 1986. In this Act, the juvenile was defined under Section 2(h) to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. Such a juvenile was entitled to various protections and these protections were uniform irrespective of the nature of the crime committed.

9. The United Nations Convention on the Rights of Child, (CRC for short) was adopted by the United Nations General Assembly on 20th November, 1989, and this Convention came into force on 2nd September, 1990. Under Article 1 of the CRC a child was defined as every human being below the age of 18 years. However, if the domestic law provided that the child attained majority below the age of 18 years, then that would be treated to be the age till which the child would remain a juvenile. Discretion was left to the individual countries to fix the age of juvenility under the domestic laws.

10. The next development was the enactment of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act of 2000) which repealed the Juvenile Justice Act, 1986. Under the Act of 2000 a juvenile or child was defined to mean a person who had not completed 18 years of age. Even a juvenile in conflict with law was defined to mean a juvenile who was alleged to have committed an offence. Since there was no clarity with regard to the date on which the age was to be determined, the definition of juvenile in conflict with law was amended and the juvenile in conflict with law has been

defined to mean a juvenile who is alleged to have committed an offence and has not completed 18th year of age as on the day of commission of the offence.

11. An unfortunate incident of rape and murder of a young girl (given the identity 'Nirbhaya') took place in Delhi in December 2012. One of the persons involved in the crime was a juvenile, aged 17½ years. This led to a call from society to re-visit the law and some sections of society felt that the word 'juvenile' had been given a very wide meaning and juveniles have been dealt with leniently. In one such matter ***Salil Bali*** vs. ***Union of India and Another***[2]**,** this Court rejected the writ petition which prayed for reconsideration of Sections 2(k), 2(l), and 15 of the Act of 2000. Thereafter, a writ petition titled ***Subramanian Swamy and others*** vs. ***Raju through Member, Juvenile Justice Board and Another***[3] was filed challenging the provisions of the Act of 2000, especially with regard to classification of juveniles. This petition was also dismissed. This Court held that the decision as to who should be treated as a juvenile is a decision for the Legislature to take and the courts cannot enter into this arena.

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2 (2013) 7 SCC 705
3 (2014) 8 SCC 390

12. Thereafter, the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to the Act of 2015) was enacted. For the first time, the Act of 2015 made a departure from the earlier Acts. Since this Act is the subject matter of discussion in this case, we may refer to the following relevant provisions of the Act.

> "Section 2(12) "child" means a person who has not completed eighteen years of age;
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> Section 2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
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> xxx xxx xxx
>
> Section 2(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;
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> xxx xxx xxx
>
> Section 2(35) "juvenile" means a child below the age of eighteen years;
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> xxx xxx xxx
>
> Section 2(45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment upto three years;
>
> xxx xxx xxx
>
> Section 2(54) "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years;"

13. A bare reading of Section 2(12), 2(13) and 2(35) clearly shows that a child or a juvenile is a person who has not completed 18 years of age, and a child in conflict with law is a child/juvenile who commits an offence when that child/juvenile has not completed 18 years of age. 'Petty offences' have been defined under Section 2(45) to mean offences for which the maximum punishment provided under any law including the IPC, is imprisonment up to 3 years. 'Serious offences' means, offences for which punishment under any law is imprisonment between 3-7 years. 'Heinous offences' have been defined to mean offences for which the minimum punishment under any law is imprisonment for 7 years or more. This was a departure from the previous legislation on the subject where the offences had not been categorised as heinous or serious.

14. Section 14 of the Act of 2015 lays down the procedure to be followed by the Juvenile Justice Board while conducting an enquiry regarding a child in conflict with law under these different categories. We are mainly concerned with sub-section (5) (d), (e) and (f), which reads as follows :-

> "**14. Inquiry by Board regarding child in conflict with law.**

xxx xxx xxx

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) … … …

(b) … … …

(c) … … …

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,—

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15."

15. The inquiry for serious offences has to be disposed of by following the procedure for trial in summons cases under the Code of Criminal Procedure, 1973 (Cr.PC for short). As far as heinous offences are concerned if the child is below 16 years then the procedure prescribed for serious offences is to be followed; but if the child is above 16 years then assessment in terms of Section 15 has to be made.

16. The above categorisation has been done with a purpose which is reflected in Section 15 of the Act of 2015, which reads as follows :-

> "**15. Preliminary assessment into heinous offences by Board.** - (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:
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> Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
>
> *Explanation.*—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
>
> (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):
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> Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101.
>
> Provided further that the assessment under this section shall be completed within the period specified in section 14.

This Section provides that if the child offender has committed a heinous offence, the Juvenile Justice Board shall conduct a preliminary assessment with regard to the mental and physical capacity of such child to commit such offence, the ability of the

child to understand the consequence of the offence and the circumstances in which the said offence was allegedly committed. The Board is entitled to take the help of experienced psychologists, psychosocial workers or other experts in the field. The explanation makes it clear that the preliminary assessment is not to go into the merits of the trial or the allegations against the child. The inquiry is conducted only to assess the capacity of the child to commit and understand the consequence of the offence. If the Board is satisfied that the matter can be disposed of by the Board, then the Board shall follow the procedure prescribed in summons cases under the Cr.PC.

17. Section 19 of the Act of 2015 empowers the Children's Court to re-assess the preliminary assessment of the Board under Section 15. It reads as follows :-

> "**19. Powers of Children's Court -** (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—
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> (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;
>
> (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

> (2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.
>
> (3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:
>
> Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.
>
> (4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.
>
> (5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

18. The Children's Court constituted under the Act of 2015 has to determine whether there is actually any need for trial of the child as an adult under the provisions of Cr.PC and pass appropriate orders in this regard. The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining child-friendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in

Sub-section (2) of Section 19. Furthermore, under Sub-section(3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformative services, educational services, skill development, alternative therapy, counselling, behaviour modification, and psychiatric support is provided to the child during the period the child is kept in the place of safety.

19. It would also be pertinent to refer to Section 21 of the Act of 2015 which clearly lays down that no child in conflict with law shall be sentenced to death or life imprisonment without the possibility of release whether tried under the Act or under the IPC, or any other law.

20. It is contended by Mr. Siddharth Luthra, that if the definitions of offences, i.e., petty, serious and heinous are read literally then there is one category of offences which is not covered by the Act of 2015. He submits that petty offences are those offences where the punishment is up to 3 years, serious offences are those where the maximum punishment is of 7 years,

and as far as heinous offences are concerned, if the definition is read literally, then these are only those offences which provide a minimum sentence of 7 years and above. He submits that this leaves out a host of offences falling within the 4th category. The 4th category of offences are those where the minimum sentence is less than 7 years, or there is no minimum sentence prescribed but the maximum sentence is more than 7 years. He has submitted a chart of such offences. It is not necessary to set out the chart in-extenso but we may highlight a few of these offences. Some of these offences relate to abetment but they also include offences such as those under Section 121A, 122 of IPC, offences relating to counterfeiting of currency, homicide not amounting to murder (as in the present case), abetment to suicide of child or innocent person and many others. He submits that it could not have been the intention of the Legislature to leave out these offences and they should have been in some category at least. The submission of Mr. Luthra is that if from the definition of *'heinous offences'*, the word 'minimum' is removed then all offences other than petty and serious would fall under the heading of 'heinous offences'. He submits that if the 4th category of offences is left out it would result in an absurdity which could

not have been the intention of the Legislature. He further submits that applying the doctrine of surplusage, if the word 'minimum' is removed then everything will fall into place.

21. On the other hand, Mr. Mukul Rohatgi, learned senior counsel for the juvenile 'X' submitted that this Court cannot rewrite the law. He further submits that the intention of the Legislature cannot be deciphered by this Court only on the ground that a category of offences have been left out. If there is a lacuna in the scheme of the Act it is for the Legislature to correct the lacuna and this Court cannot step in.

22. It is true that if we accept the submission of Mr. Luthra, then things will fall into place. There would be only 3 categories of offences and all offences punishable with imprisonment of 7 years and above would be classified as 'heinous offence'. However, we are not solving a jigsaw puzzle where we have to put all the pieces in place. We are interpreting a statute which must be interpreted as per its language and intent.

23. The Golden Rule of Interpretation was laid down by the House of Lords in ***Grey*** vs. ***Pearson***[4], as follows :-

4 (1857) 6 HLC 61

> "...I have been long and deeply impressed with the wisdom of the rule, now, I believe, universally adopted, at least in the Courts of Law in Westminster Hall, that in construing wills and indeed statutes, and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther. ..."

24. The Privy Council in ***Salmon*** vs. ***Duncombe and Others***[5] stated the principle in the following terms :-

> "It is, however, a very serious matter to hold that when the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. It may be necessary for a Court of Justice to come to such a conclusion, but their Lordships hold that nothing can justify it except necessity or the absolute intractability of the language used. ..."

25. In Justice G.P. Singh's treatise, "Principles of Statutory Interpretation'[6] the doctrine of surplusage as a limit on the traditional rule of strict construction has been referred to. The main judgment on this point is the decision of the House of Lords in ***McMonagle*** vs. ***Westminster City Council***[7]. In that case the defendant's premises contained a machine which on insertion of a coin revealed two naked women in a manifestly immoral manner. The defendant was charged with using this premises as

5 (1886) 11 AC 627
6 14th Edn., Lexis Nexis, pp.89-90, 983 (2016)
7 [1990] 2 A.C. 716

a sex establishment without any licence. His contention was that the Act (Local Government (Miscellaneous Provisions) Act, 1982) used the words 'which is not unlawful' and since he was conducting an unlawful activity he did not require a licence. It was in this context that the House of Lords held that the words 'which are not unlawful' should be treated as surplusage and as having been introduced by incompetent draftsmanship. In that case the intention of the Legislature was clear that no sex establishment could be set up without a licence. The words 'which is not unlawful' would render the entire provision nugatory. That does not happen in this case. What has happened in this case is that there is a 4th category of offences which is not dealt with under the Act. It cannot be said with certainty that the Legislature intended to include this 4th category of offences in the category of 'heinous offences'. Merely because removing the word 'minimum' would make the Act workable is not a sufficient ground to hold that the word 'minimum' is surplusage.

26. This Court in ***Vasant Ganpat Padave*** vs. ***Anant Mahadev Sawant***[8] was dealing with the provisions of Section 32-

8 2019 SCC Online SC 1226 (Judgment dated 18.09.2018 Civil Appeal No. 11774 of 2018)

F(1)(a) of the Maharashtra Tenancy and Agricultural Lands Act, 1948. It was an admitted case of the parties that this was a law for agrarian reforms. The provision in issue deals with the rights of the tenant to purchase the property where the landlord is a widow, minor or person with mental or physical disability. This Section essentially gave a right to the tenant to exercise his right of purchase within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy. The Section literally provided that the landlord shall send an intimation to the tenant of the fact that he has attained majority before the expiry of the period during which the landlord is entitled to terminate the tenancy under Section 31. Though a widow or a disabled person were not required to give notice for the tenant to exercise his right of purchase, in the case of a minor unless the minor on attaining majority issued such a notice, the tenant would not be able to exercise his right of purchase. Effectively the minor on attaining majority cold defeat the right of the tenant by not issuing the notice. It is in this context that this Court held that this would create such an anomaly that it would turn the entire scheme of agrarian reform on its head. Therefore, it held as follows :-

> "**25**. … This anomaly indeed turns the entire scheme of agrarian reform on its head. We have thus to see whether the language of Section 32-F can be added to or subtracted from, in order that the absurdity aforementioned and the discrimination between persons who are similarly situate be obviated."

After discussing various rules of interpretation the Court held that instead of striking out the classification as a whole it would delete the words 'of the fact that he has attained majority'. We may refer to para 43 which is relevant :-

> "**43**. Given the fact that the object of the 1956 Amendment, which is an agrarian reform legislation, and is to give the tiller of the soil statutory title to land which such tiller cultivates; and, given the fact that the literal interpretation of Section 32-F(1)(a) would be contrary to justice and reason and would lead to great hardship qua persons who are similarly circumstanced; as also to the absurdity of land going back to an absentee landlord when he has lost the right of personal cultivation, in the teeth of the object of the 1956 Amendment as mentioned hereinabove, we delete the words "..of the fact that he has attained majority..". Without these words, therefore, the landlord belonging to all three categories has to send an intimation to the tenant, before the expiry of the period during which such landlord is entitled to terminate the tenancy under Section 31."

27. Mr. Luthra, drew our attention to the speech of the Minister while introducing the Bill in relation to the Act of 2015. We need not repeat the speech in detail but reading of the same clearly indicates that the Minister while dealing with the issue of 'heinous offences' wherein the children could be tried as adults

mainly made reference to the offences of murder, rape and terrorism. There are some other speeches that have been referred to by Mr. Luthra, but we are not referring to the same because the intention of the Legislature as a whole cannot be gauged from the speeches of individual members, some of whom supported the Bill and some of whom did not support the Bill. The main reliance could only be made on the objects and reasons and introduction of the Bill by the Minister which basically makes reference to offences like murder, rape, terrorism, where the minimum punishment is more than 7 years.

28. There can be no quarrel with the submission made by Mr. Siddharth Luthra that in a given circumstance, this Court can even add or subtract words from a statute. However, this can be done only when the intention of the Legislature is clear. We not only have to look at the principles of statutory interpretation but in the present case, the conundrum we face is that how do we decipher the intention of the Legislature. It is not necessary that the intention of the Legislature is the one what the judge feels it should be. If the intention of the Legislature is clear then the Court can get over the inartistic or clumsy wording of the statute.

However, when the wording of the statute is clear but the intention of the Legislature is unclear, the Court cannot add or subtract words from the statute to give it a meaning which the Court feels would fit into the scheme of things.

29. There can be no manner of doubt that if the intention of the Legislature is absolutely clear from the objects and reasons of the Act then the Court can correct errors made by the person who drafted the legislation and may write down or omit/delete/add words to serve the purpose of the legislation and ensure that the legislation is given a meaning which was intended to by the Legislature. The issue is whether in the present case we can clearly hold what was the intention of the Legislature.

30. We must also while interpreting an Act see what is the purpose of the Act. The purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. After the unfortunate incident of rape on December 16, 2012 in Delhi, where one juvenile was involved, there was a call from certain sections of the society that juveniles indulging in such heinous crimes should not be dealt with like children. This incident has also been referred to by the

Minister in her introduction. In these circumstances, to say that the intention of the Legislature was to include all offences having a punishment of more than 7 years in the category of 'heinous offences' would not, in our opinion be justified. When the language of the section is clear and it prescribes a minimum sentence of 7 years imprisonment while dealing with heinous offences then we cannot wish away the word 'minimum' .

31. No doubt, as submitted by Mr. Luthra there appears to be a gross mistake committed by the framers of the legislation. The legislation does not take into consideration the 4th category of offences. How and in what manner a juvenile who commits such offences should be dealt with was something that the Legislature should have clearly spelt out in the Act. There is an unfortunate gap. We cannot fill the gap by saying that these offences should be treated as heinous offences. Whereas on the one hand there are some offences in this category which may in general parlance be termed as heinous, there are many other offences which cannot be called as heinous offences. It is not for this Court to legislate. We may fill in the gaps but we cannot enact a legislation, especially when the Legislature itself has enacted one.

We also have to keep in mind the fact that the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015 is that children should be protected. Treating children as adults is an exception to the rule. It is also a well settled principle of statutory interpretation that normally an exception has to be given a restricted meaning.

32. We may add that the High Courts of Bombay[9], Patna[10], and Punjab and Haryana[11], have taken a view that the category of 'heinous offences' cannot include offences falling within the 4th category. No contrary view has been brought to our notice. We see no reason to take a different view.

33. It was urged by Mr. Luthra that while defining 'heinous offences' the word 'includes' has been used which would mean that the definition is an inclusive definition and includes things not mentioned in the definition. We are not impressed with this argument since the definitions of 'petty offences' and 'serious offences' also use the word 'includes'. In fact the word 'includes' is a surplusage. The word 'includes' in the three definition

9 Saurabh Jalinder Nangre & Ors. vs. State of Maharashtra, 2019 (1) Crimes 253 (Bom).
10 Criminal (SJ)No.1716 of 2018 titled Rajiv Kumar vs. State of Bihar. Judgment dated 18.09.2018
11 CRR 1615 of 2018 titled Bijender vs. State of Haryana and another, judgment dated 21st May, 2018.

clauses does not make any sense. There is nothing else to be included. The definition is complete in itself.

34. From the scheme of Section 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words 'heinous offence' cannot be expanded by removing the word 'minimum' from the definition.

35. Though we are of the view that the word 'minimum' cannot be treated as surplusage, yet we are duty bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer

to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article142 of the Constitution, we direct that from the date when the Act of 2015 came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed 'serious offences'.

36. In view of the above discussion we dispose of the appeal by answering the question set out in the first part of the judgment in the negative and hold that an offence which does not provide a minimum sentence of 7 years cannot be treated to be an heinous offence. However, in view of what we have held above, the Act does not deal with the 4th category of offences viz., offence where the maximum sentence is more than 7 years imprisonment, but no minimum sentence or minimum sentence of less than 7 years is provided, shall be treated as 'serious offences' within the meaning of the Act and dealt with accordingly till the Parliament takes the call on the matter.

37. In passing we may note that in the impugned judgment the name of the Child in Conflict with Law, has been disclosed.

This is not in accordance with the provisions of Section 74 of the Act of 2015, and various judgments of the courts. We direct the High Court to correct the judgment and remove the name of the Child in Conflict with Law.

38. We further direct that a copy of this judgment be sent to the Secretary Law, Ministry of Law and Justice, Government of India, Secretary, Ministry of Women and Child Development, Government of India and the Secretary, Home, Ministry of Home Affairs, and Registrar General, Delhi High Court, who shall ensure that the issue raised in this judgment is addressed by the Parliament as early as possible or by the Executive by issuing an Ordinance. Our directions shall continue to remain in force only till such action is taken.

39. Pending application(s), if any, stand(s) disposed of.

.....J.
(DEEPAK GUPTA)

.....J.
(ANIRUDDHA BOSE)

New Delhi
January 09, 2020